

**REMARKS**

Claims 98-108, 110, 111 and 138-148 were previously pending in the application. Claims 112-137 have been previously withdrawn. Claims 98, 138 and 148 are independent claims. New Claims 149-151 are added herein. Applicants submit that support for these claims may be found throughout the specification. Accordingly, Applicants submit that no new matter has been added by way of this amendment. Applicants respectfully request reconsideration of the instant application in view of the following remarks.

**Rejections under 35 USC § 103**

Claims 98-108, 110, 111, and 138-148 have been rejected under 35 U.S.C. § 103(a) over Spallone, US Patent Number 4,959,686, ("Spallone") in view of Bezos, US Patent Number 5,715,399, ("Bezos"). Applicants respectfully submit that the cited references, taken either alone or in combination, fail to teach, disclose or suggest each of the limitations of the pending claims.

The pending Office Action attempts to address issues raised by the Applicants in the Office Action, as discussion points: "(1)," "(2)," and "(3)." (See, Office Action, pages-6-7). Applicants disagree with the assertions discussed in the Office Action and submit that the references have been over-generalized and the claim language has been misconstrued. Further, should these positions be maintained Applicants request that additional clarification with particularity how the cited references allegedly render obvious various aspects of the claimed invention.

**I. The Office Action's first discussion point asserts:**

(1) In Spallone et al., the customer is bound to the offer , as evidenced seen in FIG 3F and 3G. Applicant argues that the customer in the Spallone system could simply walk away without being held accountable. However, the argument is not correct. Spallone et al. does not describe the customer as walking away. Additionally, it is mere speculation to assume that the customer would walk away from an order placed directly by that same customer. The reference does not indicate such action by the customer, and such speculation is outside the scope of the reference teachings.

Applicants submit that Spallone's customer is in no way bound to the offer.

Applicants also submit that had Spallone contemplated binding the customer, Spallone would have addressed the issue that would arise had the customer walking away from an allegedly 'binding' offer. The Office Action discusses Spallone's Figs. 3F and 3G as allegedly evidencing the customer is bound to the offer. However, these figures simply illustrate a screen that gives the customer an option to "Press Yes to Send Your Order To The Deli" (Fig. 3F) and indicate to the customer that "Your Order is Being Printed" (Fig. 3G), respectively.

Applicants submit that these screens do not indicate in any way that the customer is bound to the offer. Instead, Spallone is silent regarding this issue. Spallone's system sends a submitted offer to the deli and prints out the receipt illustrated in Spallone's Fig. 4. Accordingly, Applicants submit that simply sending an order to the deli (Fig. 3F) and receiving a confirmation that the order was sent (Fig. 3G) as relied on in the Office Action do not render obvious the claimed features of: receiving conditional purchase offer and a payment identifier specifying a financial account for use in providing guaranteed payment for said goods or services if said conditional purchase offer is accepted, as recited in independent claim 98. Applicants request that should the Examiner's position be maintained, explicit support be provided for the position discussing how Spallone's system discusses or would be modified for receiving a conditional purchase offer and

receiving a payment identifier for use in providing guaranteed payment if the offer is accepted, as claimed.

**II. The Office Action's second discussion point asserts:**

(2) In Spallone et al., the conditional offer is conditional upon refusal by the seller, such as when the seller is out of stock of a requested item. Applicants argue that in applicant's own disclosed invention, the refusal by the seller is based on price considerations in addition to inventory considerations. However, in Spallone, et al. each item of inventory has a price, so the analysis of the inventory involves an analysis of priced items. It is important to note that the claims do not state how the prices are analyzed, or what the "pricing information" actually is. Accordingly, analysis of an inventory of priced items meets the requirements for a comparison between an order and both inventory and price information.

Applicants submit that various recited claim elements in claim 98 have been misconstrued. If the second discussion point were tenable, the system could theoretically accept or reject a purchase offer, by only comparing the offer to inventory information. This is not what independent claim 98 recites.

In contrast to these assertions, independent claim 98 recites, *inter alia* "compare said conditional purchase offer with seller inventory and pricing information to determine if said conditional purchase offer is acceptable...." (Emphasis Added). Again, Spallone is silent with regard to comparing the conditional purchase offer with pricing information, as recited in claim 98. Spallone simply does not discuss comparing the conditional purchase offer with any type of pricing information. Instead, Spallone discusses retrieving a unit price for an item for display to the customer. Spallone's system also uses the unit price as a multiplier with quantity for display as an item price. (See, Spallone, Col. 7, line 30-40). However, retrieving a unit price and determining an item price is not analogous with comparing seller inventory and pricing information as recited in independent claim 98. Applicants request that should the Examiner's position be maintained,

explicit support be provided for the position that Spallone discusses any type of comparison between the conditional purchase offer and pricing information.

**III.** The Office Action's third discussion point asserts:

(3) In Spallone, et. al., the customer dictates the price by controlling the quantity and product type of the order (FIG 3C-3E). In other words, the more the customer orders, the higher the cumulative price charged (col. 7, lines 36-37). Applicant argues that the system of Spallone is restrictive, since it prohibits two different customers from paying different prices for the same item. However, such restriction is exactly what the claims (claim 98, for example) require. The last step of claim 98 is a restriction to deter customers from submitting offers at different prices. If, as applicant states, the system Spallone restricts customers from offering different prices for the same merchandise, then it only serves to further meet the claimed requirements for preventing customers from submitting offers with progressively higher prices. Spallone has an additional mechanism for restricting orders at any price, namely, a notion in the inventory database (FIG. 5) which notes that an item is out of stock.

Applicants traverse this position and submit that independent claim 98 has been misconstrued. In contrast to the assertion from the Office Action, independent claim 98 recites *inter alia*, a system element to "take an action to deter the customer from submitting multiple conditional purchase offers for said goods or services, wherein said action includes limiting additional conditional purchase offers containing a progressively increasing price based on an unacceptable conditional purchase offer." (Emphasis added).

Applicants submit independent claim 98 does not recite an element that "prohibits two different customers from paying different prices for the same item" as asserted in the third discussion point. Instead of prohibiting two different customers from paying different prices, claim 98 refers to the same customer in the claim elements "receive a conditional purchase offer including an offer price from a customer ..." and "take an action to deter the customer ...".

Furthermore, Applicants disagree with the assertion that Spallone discusses taking any action to deter a customer from submitting multiple conditional purchase offers as recited in independent claim 98. Applicants submit that the seller simply running out of inventory is not analogous with taking "an action to deter the customer from submitting multiple conditional purchase offers for said goods or services, wherein said action includes limiting additional conditional purchase offers containing a progressively increasing price" as recited. From a business perspective, Spallone's system in no way would want to try to deter submitting additional offers with increasing price. Spallone simply checks to see whether an item is in inventory (See, Col. 7, lines 1-15) and would inform a customer that an particular item is out of stock, regardless of whether the customer submitted multiple conditional purchase offers. Spallone's system simply does not take any action, like purposefully running out of inventory as alleged, to deter the customer from submitting multiple conditional purchase offers, as recited in the claims. Once again, Spallone is silent regarding the claimed element. If the Examiner's position is maintained, Applicants request that Spallone be discussed in particularity with regard to the claimed element.

Furthermore, Applicants submit that in light of the various misconstrued claim elements discussed above, the arguments presented in the Office Action dated September 11, 2006 distinguishing the pending claims from Spallone and Bezos are herein incorporated by reference and asserted.

Applicants also submit that Bezos does not remedy the deficiencies in Spallone's system with regard to the independent claims, as it merely discusses, "[a] method and system for securely indicating to a customer one or more credit card numbers that a merchant has on file for the customer when communicating with the customer over a non-secure network." (abstract).

Accordingly, Applicants submit that 98 is not obvious in light of the cited references taken alone or in combination for at least the reasons discussed above. Further, for similar reasons, Applicants submit that claims 99-108, 110, 111 and 138-148, as well as new claims 149-151 are also not obvious in light of the cited references taken alone or in combination for at least similar reasons. Therefore Applicants request withdrawal of this ground of rejections.

### **CONCLUSION**

Consequently, the reference(s) cited by the office action do not result in the claimed invention, there was/is no motivation for such a combination of references (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)), and the claimed inventions are not admitted to be prior art. Thus, the Applicant respectfully submits that the supporting remarks and claimed inventions, claims 98-108, 110, 111 and 138-148, and new claims 149-151 all: overcome all rejections and/or objections as noted in the office action, are patentable over and discriminated from the cited reference(s), and are in a condition for allowance. Furthermore, Applicant believes that the above remarks, which distinguish the claims over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art. While many other claim elements were not discussed, Applicant asserts that all such remaining and not discussed claim elements, all, also are distinguished over the prior art and reserves the opportunity to more particularly remark and distinguish such remaining claim elements at a later time should it become necessary. Further, any remarks that were made in response to an Examiner objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to another Examiner objection and/or rejection as to any other claim element(s), any such re-assertion of remarks is not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim elements, and no such

commonality is admitted as a consequence of any such re-assertion of remarks. As such, Applicant does not concede that any claim elements have been anticipated and/or rendered obvious by any of the cited reference(s). Accordingly, Applicant respectfully requests allowance, and the reconsideration and withdrawal of the rejection(s) and/or objection(s).

If a telephone conference would facilitate prosecution of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

### **AUTHORIZATION**

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 03-1240, Order No. 17200-020CT2. In the event that an additional extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 03-1240, Order No. 17200-020CT2.

Respectfully Submitted,  
CHADBOURNE & PARKE, L.L.P.

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